

BOARD OF ZONING APPEALS MEETING

APRIL 21, 2022

Members Present

Ann Sasser Evans
Nicole Garrison
Gus Dyer
Gus Dolianitis
John Hiltzheimer

Members Absent

Lawrence Meder

Staff

Bonnie Case
Doug Plachcinski
Ryan Dodson

Chairman Dyer called the meeting to order at 10:00 a.m.

The meeting was turned over to Mr. Dodson for the election of officers.

I. ELECTION OF OFFICERS

Mr. Dodson called for nominations for Chairman.

Ms. Evans nominated Mr. Dyer as Chairman. The nomination was approved by a 4-0-1 vote. (Mr. Dyer Abstained).

Mr. Dodson called for nominations for Vice Chairman.

Ms. Evans nominated Ms. Garrison as Vice Chairman. The nomination of Ms. Garrison was approved by a 4-0-1 vote. (Ms. Garrison Abstained).

The meeting was turned back over to Chairman Dyer.

II. ITEMS FOR PUBLIC HEARING

1. *Variance Request PLVAR2020-110 remanded from the Planning Commission on a case filed by Mark and Karen Davis, requesting a variance for a deck constructed without permits onto a legal non-conforming residential use at 734 Mt. Cross Road (Parcel #72873.) The Planning Commission declined to rezone the property.*

Mr. Dyer opened the Public Hearing.

Mr. Dyer closed the Public Hearing.

Mr. Dyer stated this is something that we reviewed over a year ago and my recollection is that this is a piece of property that was a legal non-conforming use because it was being used as residential and the property is zoned commercial?

Mr. Dodson stated that sounds correct.

Mr. Dyer stated the code does not allow you to expand a non-conforming use and this deck was considered an expansion on the non-conforming use. Is everyone caught up to speed? Questions or comments from the board? If this were in fact someone using this as an office which would be a legal conforming use then they could also construct a deck, correct?

Mr. Plachcinski stated they could.

Mr. Dyer stated what is the remedy if we denied this request.

Mr. Plachcinski stated the remedy is that the zoning ordinance allows the BZA to grant a special exception for uses in this scenario. The zoning ordinance lays out some criteria that are listed in the staff report in Article 13.G.4 where the BZA can grant a special exception allowing the deck to be an accessory to this non-conforming use. I advise this case meets those criteria and the BZA grants a special exception today.

Ms. Evans made a motion to keep the deck variance for Application PLVAR2020-110 as a non-conforming use. Mr. Dolianitis seconded the motion. The motion was approved by a 5-0 vote.

2. *Variance request PZ22-24, filed by the Danville Redevelopment and Housing Authority, requests to allow a 14' by 22' accessory building in the required front and side yard setbacks and within ten (10') feet of the principal building at 524 Chatham Avenue (Parcel # 23043). The accessory building is for storage to support the community center.*

Mr. Dyer opened the Public Hearing.

Present to speak on behalf of this request was Linwood Terry, from Danville Redevelopment and Housing Authority. Mr. Terry stated the purpose of us being here is that we are asking for a variance for the storage building. We have built a 1.6-million-dollar community center funded by the City of Danville, HUD Funds, and from the foundation. The purpose of this storage building is that we need a space to store tables and chairs for the community center because we do not have enough room in the building to store. Some of the pictures that I have submitted, you would have seen that in the back there is a basketball goal, and we cannot use it because we have nowhere to store the tables or chairs for our community area. In the pictures on the left side of the building there is not enough room to get back there with a storage building because of the distance between the building and the hill. In the back there is not enough room to place a building and there is no way to get to the back because we would have to come across individuals' properties with fence in one area and there is a wooded area that we could not get across because of the woods. The right side of the building we cannot get there because of the wooded area and transformers. The best place that we saw that we could get to the building was right there on the side which we thought would be the side of the building not being in the front of the building and that is why we chose to put it there. Somehow there was some missed communication with the contractor that bought the building, who was supposed to have gotten the building permit. We were under the assumption that the contractor was supposed to apply for the building permit. We went back and looked at the contract that he gave us, and nothing was in the contract saying that he was not responsible for getting the building permit.

We assumed that they were going to get it and they thought we were going to get the building permit. Normally, with the Housing Authority we tell them that they do not have to pay for the building permit, but they just must apply for the building permit and then they waive the fees when we are doing a project. Therefore, we are asking for a variance for the building, and it is a vital part that we need for the function of the community center to store stuff safely and securely out of the way.

Mr. Dolianitis stated is this not considered when the property was being built?

Mr. Terry stated no sir, after the building got going more activities were brought up that wanted to be done in the building. We had a storage room set up in the community room, but it was not big enough to hold everything.

Ms. Evans stated was this the building that was prebuilt and just placed on the site or was it stick built?

Mr. Terry stated it was prebuilt.

Ms. Evans stated they did not realize that this could not be put in the front yard setback?

Mr. Terry stated evidently not.

Mr. Dyer stated the issue is not necessarily who was supposed to get the building permit because the building permit would have been denied.

Ms. Evans stated if it said for the front yard.

Mr. Dyer stated right.

Mr. Terry stated we do have support from the resident that lives right next to the building.

Ms. Garrison stated from what you said you knew that you should have a building permit from somewhere before you put this building there, right?

Mr. Terry stated yes ma'am.

Ms. Garrison stated you knew that you needed a permit, and you did not make certain that you had one before you had the building brought?

Mr. Terry stated we mentioned to the contractor had they gotten the building permit that they would not have to pay for it.

Ms. Garrison stated you did not make sure you had a building permit?

Mr. Terry stated no ma'am.

Mr. Dyer closed the Public Hearing.

Ms. Evans stated I think it is a distraction being in the front.

Ms. Garrison stated I agree.

Mr. Dyer stated I agree with that.

Ms. Garrison stated it is not attractive.

Mr. Dyer stated another problem I have is that we will be setting a precedent.

Ms. Garrison stated I am also troubled by the fact that they are asking forgiveness instead of permission.

Mr. Dolianitis stated it looks like that should have been foreseen of what they were going to need as far as space.

Ms. Evans stated how long has this been in existence?

Mr. Dyer stated the building is fairly new.

Ms. Evans stated does it meet the side yard setbacks from the wall?

Mr. Plachcinski stated it would be 5 feet, so it is close for an accessory building. We typically never allow an accessory building in the front yard.

Ms. Evans stated I am just trying to look at all angles.

Ms. Garrison made a motion to deny the Variance Application PZ22-24. Mr. Dolianitis seconded the motion. The motion was denied by a 5-0 vote.

3. *Appeal of Zoning Administrator Request PL22-69, filed by SND Management LLC c/o Shelby Fitzgerald, requests an appeal of a zoning violation as allowed in Article 13 of Chapter 41 of the Code of the City of Danville, Virginia at 3007 Riverside Drive (Parcel # 56216). The Zoning Administrator sent a zoning violation notice to the property owner for operating skill games.*

Mr. Dyer opened the Public Hearing.

Present to speak on behalf of this request was Terrell Carter, I am employed with SND. Mr. Carter stated I am here to speak about the request the appeal the zoning for the Special Use for the violation. I do not believe that they received a violation notice that they were in violation of anything.

Mr. Plachcinski stated I will verify that.

Mr. Dyer stated is this a rehash of what we discussed over a year ago, the skilled games?

Mr. Plachcinski stated were you attempting to apply for a Special Use Permit?

Mr. Carter stated yes.

Mr. Plachcinski stated, and we would not allow you to apply for the Special Use Permit because we cannot grant a Special Use permit.

Mr. Carter stated I understand, yes sir.

Mr. Plachcinski stated you are appealing?

Mr. Carter stated the discussion of not allowing me to apply for the Special Use Permit.

Mr. Plachcinski stated that makes sense.

Mr. Dyer stated okay does everyone understand what the situation is.

Mr. Carter stated just to clarify for my understanding right now with the zoning laws and statutes that right now within the City of Danville you cannot apply for a Special Use Permit because it just does not allow it. I was just told that you just cannot do it.

Mr. Plachcinski stated right it still is a decision and let me explain the reason to the group. In Virginia Code skill games remain illegal. Article 1 of the zoning ordinance "*Whenever any provision of any State or Federal statute or other City ordinance or regulation imposes a greater requirement or a higher standard than is required by this ordinance, the provision of such State or Federal statute or other City ordinance or regulation shall govern.*" We did not allow the application for a Special Use Permit because the State Law overrides our local zoning codes. So, even if we were to have something in our code to allow for skill games, until the States Laws are amended to allow them the city cannot consider.

Mr. Dyer stated so was their application an application for skill games or was it for an arcade?

Mr. Plachcinski stated it would have been for indoor recreation.

Mr. Dyer stated so someone can come before you and request a special use permit for indoor recreation, correct?

Mr. Plachcinski stated they can.

Mr. Dyer stated if these folks were putting in pin balls instead of skilled games, then they could come to you to make an application?

Mr. Plachcinski stated they could.

Mr. Dyer stated what is the difference? If they come to you, are they asking specifically for a Special Use Permit to operate skilled games or requesting a Special Use Permit for?

Mr. Plachcinski stated that was our understanding that they were requesting an indoor recreation use that involves skilled games.

Mr. Dyer stated let us say they come back to you tomorrow and said we just want to make an application for indoor recreation. Do you ask them what indoor recreation is?

Mr. Plachcinski stated we would yes, under the zoning code there is an explanation of what the proposal is.

Mr. Dyer stated if they were to come to you tomorrow and say that they want to put in 3 pool tables would they still have to have a Special Use Permit for indoor recreation, correct?

Mr. Plachcinski stated that is correct.

Mr. Dyer stated the denial of their request is to allow them to make a Special Use Permit application which would go before the Planning Commission and City Council.

Mr. Plachcinski stated that is correct.

Mr. Dyer stated what they are appealing for is your decision that they could not apply for a Special Use Permit for skilled games.

Mr. Plachcinski stated that is correct.

Mr. Terry stated speaking of skilled games and the legality of the issue right now in Virginia there is an injunction in place.

Mr. Plachcinski stated we cannot consider that injunction. The zoning ordinance is very specific, it says the statutes. The injunction that is in place only applies to previously authorized machines in locations under the Virginia ABC, which this location is not.

Mr. Dyer stated in other words even if they are permitted it is going to be those that were grandfathered prior to July 1, 2020. Is that correct?

Mr. Plachcinski stated correct.

Mr. Dodson stated that was my understanding. That injunction specifically applies to the Governor, the Attorney General, the Commonwealth of Virginia, including the Commonwealth's Attorneys, and the ABC Board, but no other entity such as the city through zoning. The injunction is very specific to criminal enforcement.

Ms. Evans stated just to clarify you do not have skilled games now?

Mr. Terry stated at this moment there are skilled games.

Ms. Evans stated in your building there are skilled games?

Mr. Terry stated yes.

Ms. Garrison stated, and you are not registered through the ABC Board?

Mr. Terry stated we cannot register with the ABC Board.

Ms. Garrison stated you did not register before?

Mr. Terry stated the business was nonexistent prior to. We just want to make sure that we are operating within the statute that you have set forth. We came here to bring to your attention that we are not trying to do anything underhanded.

Mr. Dyer stated under these circumstances they are not required to meet the five criteria. They are just appealing your decision and we just decide whether to uphold your decision or to overturn your decision. Is that correct?

Mr. Plachcinski stated that is correct.

Mr. Terry stated I would like to add that we are trying to do it the right way.

Mr. Dyer stated we appreciate that, but the problem is that we do not make the laws. We just must determine whether you are following them or not. We must determine if that Mr. Plachcinski is following the correct protocol.

Mr. Plachcinski stated there were approximately 70 machines that were allowed by Virginia in the City of Danville, when Virginia for 1 year allowed legal skilled games. We know at least during that time there were about 130 operating. So, already when the State Legislature did allow some even at those locations they seemed to multiply, and right now we are aware of about 300 machines operating at locations that were previously approved. That number has at least quadrupled and that does not include any locations that were not approved by ABC.

Mr. Carter stated it was my understanding that the previous Governor's order gave ABC a mandate where they could govern skilled games. I believe that mandate ended on July 2021 and at that point and time ABC is not in control of it. Then once this Judge declare the injunction and it became common in a gray area within the law and ABC does not control it either if we are speaking at this moment right now. No one govern it.

Mr. Harold Garrison, the Chairman of Planning Commission, stated I will state that if they come before the Planning Commission asking for an indoor recreation that we will ask specifically what they are planning to put in and if they say that they are putting in skilled games that is one of the conditions that we will put on there that there will not be skilled games allowed.

Mr. Dyer closed the Public Hearing.

Mr. Garrison stated I would like the Attorney to just clarify the whole ABC Board situation.

Mr. Dodson stated originally there was no controlling law on the books for these machines a couple of years ago. A law was passed I believe in 2020 that banned them 1 year from the date that the law passed and for 1 year machines that were in ABC licensed facilities prior to that first date were allowed to continue to operate for 1 year. There is a fixed number and usually there is an orange sticker on the machines where those machines are grandfathered in. On July 1, 2021, is when that expired, and it technically went from the grandfathered ones being allowed to none being allowed. The criminal enforcement of the ban has been challenged in Greenville County and there is an injunction pending the outcome of that case against criminal enforcement of the ban, specifically on these grandfathered machines. So, right now whether these machines are illegal is being contested right now and that is what the injunction is about. It is about criminal enforcement but zoning and other issues like that were not subjected to it nor was the city individually subjected to it. Only the Governor, Attorney General, the Commonwealth including the Commonwealth's Attorney's, and the ABC Board.

Mr. Dyer stated if in fact the Judge determines these machines are on the same par with pool tables and pinball machines then all they would be required to do is to come back and request a Special Use Permit for indoor recreation.

Mr. Dodson stated presumably if that is how the Judge rules that all the machines are allowed. I am not sure if the specific enforcement is against the preexisting ones that were allowed to operate.

Mr. Dyer stated so it would be determined by what the Judge says.

Mr. Dodson stated that is correct.

Mr. Dyer stated if these folks were to come back tomorrow and request a Special Use Permit for indoor recreation saying they were going to put in 50 pinball machines. Since pinball machines are not questionable, then Mr. Plachcinski would have no grounds to deny them the right to request this Special Use Permit?

Mr. Dodson stated that is my understanding and I believe the sole denial here is because of these specific machines.

Mr. Dyer stated the Planning Commission can recommend denial and the City Council can in fact deny the Special Use Permits.

Mr. Dodson stated yes.

Mr. Plachcinski stated Mr. Plachcinski cannot tell someone that they cannot apply.

Mr. Dodson stated he cannot tell someone that they cannot apply as long as they are not requesting any illegal act.

Mr. Dyer stated that is why this request was denied because this is being an illegal act not because he does not think they have the right to request a Special Use Permit.

Mr. Dodson stated yes sir.

Ms. Garrison stated he has denied them the opportunity to apply for a Special Use Permit. If in May the Judge comes along and says forget it, it is legal to get on to it. Then they can come back.

Mr. Dyer stated this does not have any impact on their ability to come back next week, in fact if the law changes. Correct? This is not a thing where if they are denied they must wait a year or something like that.

Ms. Garrison stated if the law changes in May.

Mr. Dyer stated maybe, that is not the right question.

Mr. Dodson stated my understanding is denial from Planning Commission and City Council is when they are not allowed to have a substantially similar application for a year.

They have not made an application yet and your decision on this will not be binding right now.

Mr. Dyer stated this determines whether they can make their application or not.

Mr. Dodson stated right now.

Mr. Dyer stated a month from now that may change.

Mr. Dodson stated yes, and they will not be prohibited at that stage.

Mr. Dyer stated we are not grandfathering anything that would not give them the ability to make this application.

Mr. Plachcinski stated no, they will retain all opportunities for due process.

Mr. Dyer stated did you get all of that?

Mr. Carter stated yes sir.

Mr. Plachcinski stated I would like to clarify and point out the 3 cases and I apologize for this 504 Kemper and Riverside did not receive notices of violation and they applied proactively, and South Main Street did receive a notice of violation. I am not sure if they are all the same folks, but the community began to understand that we were sending notices of violations because they were reported, and they did apply. We would not allow them to apply for Special Use Permit at 504 or Riverside Drive. The South Main case that we have received a notice of violation, but this location did not.

Mr. Dyer stated these folks have never been in violation, and they have not done anything?

Mr. Plachcinski stated we have not sent them a notice of violation.

Mr. Dyer stated all they have done is make a request for a Special Use Permit and you told them that they could not request that use.

Mr. Plachcinski stated right.

Mr. Dyer stated that is what we are upholding whether he had the authority or was correct in doing that or we are going to overturn it.

Mr. Dodson stated it would be either to overturn or uphold the zoning administrator's decision to deny this Special Use Application.

Ms. Evans made a recommendation to uphold the zoning administrator's decision to deny this Special Use Application for PL22-69. Mr. Dolianitis seconded the motion. The motion was approved by a 5-0 vote.

Mr. Dyer stated Mr. Plachcinski's determination that you cannot apply for a Special Use Permit as of right now we are upholding and that may change in the future.

4. *Appeal of Zoning Administrator Request PL22-71, filed by Usman Enterprise c/o Ganzafari Ali, requests an appeal of a zoning violation as allowed in Article 13 of Chapter 41 of the Code of the City of Danville, Virginia at 900 South Main Street (Parcel #22494). The Zoning Administrator sent a zoning violation notice to the property owner for operating skill games.*

Mr. Plachcinski stated this one did receive a notice of violation.

Mr. Dyer opened the Public Hearing.

Present to speak on behalf of this request was Terrell Carter. Mr. Carter stated this is Mr. Ali and this location did receive a violation notice but the case that we just previously discussed is a variance to this case. This location was approved by The ABC Board, and we had the yellow stickers. I was told that the yellow stickers had to be removed and destroyed once the mandate ended and there are no longer stickers on the machines. We are trying to apply for the Special Use Permit, and this is the same kind of issue before us again.

Mr. Dyer stated once again he is applying for a Special Use Permit for indoor recreation and that is being denied or why?

Mr. Plachcinski stated he is appealing to the notice violation.

Mr. Dyer stated you determined he was in violation because he does not have a Special Use Permit for indoor recreation.

Mr. Plachcinski stated correct.

Mr. Dyer stated has he come to you to apply for a Special Use Permit?

Mr. Plachcinski stated no because we have no way of verifying or understanding any previous compliance. So, we would not allow him to apply for a Special Use Permit.

Mr. Dyer stated when he was operating legally with the ABC permit, he was operating legally through state channels but not locally because he did not have a Special Use Permit for indoor recreation.

Mr. Plachcinski stated correct.

Ms. Evans stated if he had that then he could continue until the injunction decision is made on May 18.

Mr. Plachcinski stated he would still be in violation of the Special Use Permit which has never been allowed.

Ms. Evans stated okay.

Mr. Carter stated what Mr. Plachcinski is saying that even when we were under the ABC that the Special Use Permit was not even allowed then?

Mr. Plachcinski stated it was never applied for and there was never an application. I would also ask for discussion about how many machines were approved by ABC at this location and how many are in operation now.

Mr. Carter stated 6 machines were approved and 6 machines are in operation.

Mr. Dyer stated we had some debate about what constitutes indoor recreation and determined anything over 3 machines constitutes indoor recreation, and you are required to have a Special Use Permit for that. Once again, a Special Use Permit is a purview of the Planning Commission and City Council. If Mr. Ali were to come to you and make an application for commercial indoor recreation, would you again tell him that he cannot make that application, or would you let him make the application and let the City Council make that decision to obtain it? This is complicated and I apologize for all these questions.

Mr. Plachcinski stated because a notice of violation was sent prior to the recent city ordinance changes and there was not an appeal filed I believe we would have to verify but we may be able to allow a Special Use Application.

Mr. Dyer stated has that been passed yet that these would be considered that adult entertainment would be restricted.

Mr. Dodson stated it has passed and usually under the doctrine of vested rights in Virginia applications or similar documents that were filed prior to a zoning code change, the previous zoning laws still technically apply to that.

Mr. Dyer stated my question is will he be grandfathered in, or will he get another violation letter saying that he is not zoned correctly.

Mr. Dodson stated sounds like it is a zoning administrator call and it sounds like a zoning administrator would consider that being prior to the change which means the vested rights would attach.

Mr. Plachcinski stated the application we would expect some verification of compliance with what had been allowed under previous Virginia Law through ABC. We would like to see evidence of the licenses, paperwork documentation of yellow stickers, and explanation of that alone is what is being requested.

Ms. Evans stated do you have that?

Mr. Ali stated I can generate that.

Mr. Dyer stated to clarify things this case is different because what Mr. Ali has received is a notice of violation through the City Planning Department that he is in violation of the code as opposed to the other folks they were not in violation of anything. What Mr. Ali

needs to do is clean up his violation of the code and he can do that by coming to you and applying for a Special Use Permit for indoor recreation.

Mr. Plachcinski stated correct.

Mr. Dyer stated he would not be able to operate his machines until that Special Use Permit is granted?

Mr. Plachcinski stated I will have to examine that question more carefully.

Mr. Dyer stated okay, the question before us right now is whether Mr. Ali is in violation of the city code that requires him to have a Special Use Permit for indoor recreation. If we uphold that and find that he is in violation, then all he needs to do is go and apply for a Special Use Permit for commercial indoor recreation. He will need to go through the channels of the Planning Commission and through the City Council. Does everyone understand?

Mr. Ali stated the whole area operates these machines. How come they can operate the machines?

Mr. Dyer stated they are all going through the process. I hate to say this, but somebody must be first or second.

Mr. Plachcinski stated if I could also respond that many locations are under criminal investigation right now, which we cannot comment on because there may be ongoing criminal investigations. There was a concern mentioned in Virginia, when there is a complaint about zoning or other uses it is anonymous, so I do not know who made the complaint. We sent more than 10 letters out to other violators, and if we are aware of anyone we pass that information along to other legal authorities.

Mr. Ali stated in the meantime we will apply for the permit, but we can't still operate those machines?

Mr. Plachcinski stated I will go over that with the City Council and we will come up with a determination but if the BZA would suggest that the applicant apply for a Special Use Permit. Then I would just ask that they give a reasonable time frame, like by the end of the week to apply for a Special Use Permit so that we can get them on the May Planning Commission meeting.

Mr. Dyer stated even if it were determined that you could not operate and then it was determined that you can legally operate your machines it would be no more than six weeks. I think that would be a reasonable time.

Mr. Plachcinski stated we would expedite your case to get it in to that process.

Mr. Dodson stated presently Doug if they were to go through these channels, just to clarify you would not be seeking any actual penalties under the violation as long as they are making efforts.

Mr. Plachcinski stated as long as the ball is still bouncing. Does that make sense?

Mr. Carter stated yes, I have one more question. Did I hear you correctly when you said if it is 3 or less a Special Use Permit is not required.

Mr. Dyer stated that is something that we have discussed and was overruled by the Board, and they determine that any amount of these games does require a Special Use Permit. There is a section in the code and one of them defines what an amusement parlor is and that is any business that has more than 3 machines. Then there is a part of the code that requires a Special Use Permit to have an amusement parlor. There was some opinion that if you had 3 or fewer machines you did not have to apply for the Special Use Permit because you were not an amusement parlor. The board overturned that and decided that any number of these machines constitutes commercial indoor recreation and even 1 machine requires a Special Use Permit. If you want to see a lawyer knock yourself out but that is just the background. If you want to go back and read some of our minutes, they are online, and I cannot begin to tell you where they started but you can go back and see what the discussions were at that point.

Mr. Dodson stated I believe it was December of 2019. It was right before Covid.

Mr. Dyer closed the Public Hearing.

Ms. Evans made a motion that the BZA to affirm the notice of violation for PL22-71 and the applicant has until Friday, April 22, 2022, for a Special Use Permit. Mr. Hiltzheimer seconded the motion. The motion was approved by a 5-0 vote.

5. *Appeal of Zoning Administrator Request PL22-72, filed by Usman Enterprise c/o Ganzafari Ali, requests a Special Use Permit as allowed in Article 13 of Chapter 41 of the Code of the City of Danville, Virginia at 504 Kemper Road (Parcel # 23940). The applicant attempted to apply for a Special Use Permit, and we told them no.*

Mr. Dyer stated this is the exact same case that we had in item 3.

Mr. Plachcinski stated that is my understanding.

Mr. Dyer stated basically the same.

Mr. Carter stated yes, it is the same.

Mr. Dyer stated they are not in violation or anything and all we are doing again on this one is upholding the zoning administrator decision or overturn his decision.

Ms. Garrison made a recommendation to uphold the zoning administrator's decision to deny this Special Use Application for PL22-71. Ms. Evans seconded the motion. The motion was approved by a 5-0 vote.

6. *Variance request PZ22-74, Filed by the City of Danville, to allow an 8'x8' wood deck with stairs in the front yard setback of a legal non-conforming building at*

145 Gypsum Road (Parcel #76482). The deck and stairs provide better access to Fire Department storage space.

Mr. Dyer opened the Public Hearing.

Present to speak on behalf of this request was John Yeaman, the Division Chief of Training and Safety for the Fire Department. Mr. Yeaman stated what we are looking to do, this is a training building that we have had for the fire department thirty plus years or longer before me or Cpt. Dave Cornell, he is with the fire department as well. We are trying to make better use of it. We use this building for what we call "mayday" fire fighter and rescue. We teach a lot of fire service people on how we rescue other people. In this building we focus on how to rescue each other. This will allow us to make better use of the second story of the building, it will allow us to go up and down a set of steps and have a small deck area outside verses trying to gain access by a ladder. It will give us a safer means of access and egress to the second floor of the building.

Mr. Dyer stated how is your current access to that second floor?

Mr. Yeaman stated a ladder.

Mr. Dyer stated there are no steps or anything?

Mr. Yeaman stated no steps on the inside, and it has been like that since the day that it was built.

Mr. Cornell stated the roof was added a year or two ago. It had a concrete flat roof, and it was leaking, and we were able to obtain some trusses. We created this room creatively.

Ms. Garrison stated it was built specifically for the fire department or did you just acquire it from somewhere else?

Mr. Yeaman stated it was built for the fire department. If you are aware of the training facility that we have on Stinson Drive the fire training building out there. Before that building was built this is the one that we used. This building has been in place, and we use to do live fire training inside this building, and we would burn straw, pallets, and stuff like that. Then when we built our new building, we stopped using this building for those purposes. It has always been used for fire fighter training.

Mr. Dyer stated will you go back Doug and stop at the plat. Where does this building sit?

Mr. Yeaman stated if you are familiar when you turn left off Gypsum Road and you go down and cross the railroad tracks. Before you go through the gate to the wastewater treatment plant the gravel road kind of bares to the right and the building sits to the right just outside of the fence of the wastewater treatment.

Mr. Dyer stated this property is zoned industrial.

Mr. Plachcinski stated yes.

Mr. Dyer stated what are the setbacks for industrial zoning? It does not look like they are within.

Mr. Plachcinski stated the issue is with the railroad.

Mr. Dyer stated the yard here that you are intruding on is a railroad track.

Mr. Yeaman stated it is about 75 feet from the railroad tracks.

Mr. Dyer stated and that violates.

Mr. Plachcinski stated where the property line is. There is not a physical development, so the right of way or the railroad.

Mr. Dyer stated was the railroad notified of this application since they are the property owner.

Mr. Plachcinski stated I believe they were.

Mr. Dyer stated have you received any feedback from them and are they opposed?

Mr. Plachcinski stated no. Rather than it being a variance application we recommend it be just like we did the first application today with a special exception just allowing it a nonconforming building the additional accessory to it.

Mr. Dyer closed the Public Hearing.

Ms. Evans made a recommendation to allow this accessory as a non-conforming use. Ms. Garrison seconded the motion. The motion was approved by a 5-0 vote.

III. APPROVAL OF MINUTES FROM OCTOBER 21, 2021

The October 21, 2021, minutes were approved by a unanimous vote.

IV. OTHER BUSINESS

Mr. Plachcinski stated we will have business in May.

Ms. Garrison stated is it skilled games?

Mr. Plachcinski stated it is.

Ms. Garrison stated is there any advantage or any way to delay these skilled games until after that Judge rules because it seems to me that everything is pending on his decision?

Mr. Plachcinski stated we want to make sure that we allow people the appeal process to keep going and by delaying it will leave things up in the air for them and the city. I am optimistic that the Judge's ruling will clarify this issue. However, that **is something far**

from what we can count on. I would not expect in May as the trial proceeds that there will be any immediate creolization.

Ms. Garrison stated there's not going to be a magic pill.

Mr. Plachcinski stated the other thing we will be proposing are some basic sets of bylaws, rules, and procedures we are doing with all the boards, and you will have them in your packet ahead of time. They are pretty cut and dry. There is nothing change, basic guidelines for running the public hearing and that sort of thing.

Ms. Evans stated I would like to discuss what we can do about members that have not attended in years.

Mr. Plachcinski stated I can have Clerk DeMassie pull the attendance records and we can look at that.

Mr. Dyer stated technically it says if you miss more than two meetings in a row you are supposed to be excused.

Ms. Garrison stated I have been here over six years and there is a member that I have never met.

Ms. Evans stated it is time for that position to be filled.

Mr. Dyer stated it is unfair to the applicant because in fact we do require 4 votes to approve anything and a lot of times there are only 4 people here. It is not fair to the applicants. If anybody knows anyone that would like to apply, then I would encourage them to apply. The problem is that we do not have anyone that wants the position.

With no further business, the meeting was adjourned at 10:59 a.m.

APPROVED